

Personal Observations

Unlike practice in most countries, Norway still maintains a six-day week in most of its schools. Resistance to a five-day week is particularly strong in the gymnasia where teachers maintain that with the amount of work required by the Ministry of Church and Education a five-day school week is impossible. The Ministry is willing to reduce the days in the school week but not the amount of learning required.

While the Ministry of Church and Education appears well staffed with competent people, it is accorded only a minor role in salary negotiations and mediation. It does not even have a representative at the bargaining table or a resource person to provide educational information. The Ministry of Prices and Wages and the Ministry of Finance are the government power sources in salary negotiations.

A tremendous difference exists in the size and influence of the teacher organizations. Some are large and powerful such as the organization of elementary teachers, others are smaller but powerful as the gymnasia teachers organization. The technical teachers association is very small with only about 1,500 in membership of the approximately 2,000 working in this area. Their strength comes in their affiliation with private trade unions.

The variation in the percent of support of education from the national government is unexpected in a country as highly centralized as Norway. The reported range in national support from 15 to 85 percent is almost as great as state support of education in the several states in the U.S. Support from regional or local sources is secured by tax levies which the central government mandates. Most of the building and

equipment costs are the responsibility of the local government. Considering the fiscal responsibility they carry municipalities and school boards have only minimal authority. This is related largely to school buildings, purchase of equipment, compensation for extra jobs, etc.

The pay scale for local employees and officers is much less than the national scale, although the same negotiation procedure is used in developing the schedules. This has created some problems since some school personnel, e.g., secretaries, clerks and similar classifications are on the local scale while other school employees are on the national scale.

In public employment the salary for all persons with the same qualifications and experience is the same. There is no financial recognition of the fact that some positions are much more demanding than others. This appears to make a career in education less desirable than in other fields since teaching requires a six-day week with accompanying home work in correction of papers, construction of tests, lesson plans, extra-curricular assignments, etc.

With taxes in the upper brackets extremely high, salary negotiations with teachers is becoming more difficult. Given a comparable percentage increase those at the upper income levels may receive little or no increase after taxes. This is pushing them to requesting more fringe benefits whereas the lower income group need percentage wage increases to cope with inflation and changing standards of living. While an "after taxes" salary adjustment could alleviate this problem, it is not contemplated at the present time.

CHAPTER VII

SALARY NEGOTIATIONS IN SWEDEN

In many respects Sweden was an ideal place to study centralized negotiation of teachers' salaries. Here negotiations are nationwide and officials are well experienced in the processes of negotiations. The procedures are well organized and formalized. When these data were being collected, a massive nationwide strike involving all public servants including teachers, policemen and army personnel had just been terminated with the King (and Parliament) ordering the workers back on their jobs. Most of the strike issues were unresolved and were still subject to heated discussion.

For a clearer understanding of the framework within which negotiations are conducted, a brief review of several facets of the educational system is presented. This review is not directed toward comprehensiveness but to explain a number of salient points of background which are related to negotiations.

The major aim of the Swedish School System is the achievement of universal free public education. To this end, education is not only free and without charge for tuition in the compulsory school program, grades 1-9 inclusive, but also in vocational and technical schools, county colleges, secondary and higher secondary schools. Further education at colleges and universities also is free with state-provided study grants to cover the cost of room and board. Excellent, comprehensive programs

are also provided free for all types of handicapped children--blind, deaf, emotionally disturbed, mentally retarded, etc. Meals are furnished free of charge in the compulsory school program and in secondary, vocational and technical and comparable schools. Textbooks are either free or obtainable on a loan basis in most schools and school supplies are provided by the municipalities without charge.

Study grants include money (allowances) for travel and lodging as well as for tuition. These allowances are granted without a means test up to a certain amount with payments reduced but not eliminated at the higher income levels.

With so much of education provided free and with other excellent quality public services provided, taxes are understandably high and any salary increases granted in negotiations must be scrutinized carefully lest the increases fail to provide an after taxes increase for the better paid teachers and force taxes to a confiscatory level. As in all other countries studied, the people think taxes are too high but the Swedish people have more justification for this judgment than most.

As in other Scandinavian countries, teachers, for the most part, are civil service employees of the national government. In salary negotiations teachers do not constitute one unit but are in several different bargaining units, categorized with other civil service employees of equal qualifications. The organizational composition and size of each bargaining unit will be described in the section, Participants in Negotiation.

Historical Background

The foundation for centralized salary negotiations in Sweden was laid in 1937 when the Swedish Central Organization of Salaried Employees was formed. Membership in this organization includes civil servants at both the national and municipal levels. In the same year a proclamation was issued giving civil service employees the right to submit their requests and views to governmental authorities. The format for setting forth their views was clearly defined.

In 1944 the organization of civil servants joined with workers from the private sector to form a powerful union of some 175,000 members. In 1947 the civil service employees concluded their first real agreement and this date is generally considered the birthday of negotiations for civil service employees including teachers. In 1950 the Ministry of Civil Service Affairs was established to deal with all questions of salaries and conditions of employment for all civil service employees. This agency was superseded in 1965 by the Government Employee Negotiation Board which now is designated as the National Collective Bargaining Office, currently the official negotiating body for the government. An entirely new code for salary negotiations for civil service employees became effective in 1966 with many former regulations embodied in the act. The new law provides for negotiations and some limited aspects of mediation. The act had its first trial during that year and resulted in very arduous negotiations and, in the final stages, mediation. The negotiations indicated clearly that the organizations of civil service employees were not geared to the new negotiation procedures and in 1967 the largest of the organizations, Central Organization of Salaried Employees, Civil

Servant Section (TCO-S) reorganized to adapt itself to the new procedures. In this adaptation economic preparedness for impasse negotiation and conflict (strike and lockouts) were extended. This action came none too soon since 1971 witnessed a major nationwide strike of all public employees.

Negotiation Issues

In the broadest sense the present law could be described as a "negotiate everything" act. Some items are negotiated with the various fiscal agencies of government and some with the Ministry of Education. However, items of negotiations specifically listed are: salaries, salary structure, allocation of posts to salary grades, fees (remuneration), supplementary allowances, including extra compensation by geographical areas, social benefits (sick pay, free medical attention, medicine, etc.), extent of the working week, paid holidays, traveling allowances and pensions. A number of other items are listed as subjects for consultation but to be decided unilaterally by competent governmental authorities. However, where consultation ends and negotiation begins is not always clear and joint agreement on a number of the following items is frequently achieved: Organization of service, creation of posts, promotions, educational qualifications and other requirements, duties of offices, direction and distribution of work, office hours, leaves of absence and disciplinary punishment. However, the process of bargaining on the above items is not termed negotiation since in a strict sense the Ministry of Education or its designated representative, the National Board of Education, may not agree with what is proposed and reject it outright. When this occurs the civil service employees, in this case teachers,

must accept the decisions. On these matters there is no mediation and no authority to strike.

Participants in Negotiation

The participants in negotiation include representatives of civil service employees with whom teachers are classified and representatives of governmental agencies. Local municipal boards or local boards of education do not participate in negotiations on teachers' salary scales and conditions of employment.

Professional Staff

This is in reality the civil service employees side since teachers and professional staff in education constitute only about 90,000 of the over 218,000 civil service employees with whom they are involved in negotiations at the national level. Teachers belong to three of the four different organizations which bargain at the national level.

1. Classroom teachers - TCO-S
2. Secondary teachers - SACO
3. Teacher college and university staff - SR

In addition, teachers of handicrafts and skilled trades are employees of municipalities and bargain as part of the civil service employees group at the municipal level. Thus, teachers are part of and bargain with three of the four civil service employees groups at the national level and with one of several groups at the municipal level. The names of the organizations with which teachers are affiliated at the national level and their total membership are given below.

TCO-S = Central Organization of Salaried Employees in Sweden,
Civil Servant Section; approximate membership 160,000

SACO = Swedish Confederation of Professional Associations;
approximate membership 40,000

SR = National Federation of Government Employees;
approximate membership 18,000

TCO-S, the largest of the above organizations by far, is affiliated with a parent organization, TCO, which includes 23 different associations and 640,000 members. The total membership includes employees in the private as well as the public sector.

Government

Negotiations for the government are conducted by the National Collective Bargaining Office placed in the Ministry of Finance. This office consults continuously with the Parliamentary Pay Delegation regarding the views of Parliament on any proposed salary scale or changes in conditions of employment. The Parliamentary Pay Delegation does not participate in any of the negotiation sessions. The National Collective Bargaining Office must also maintain constant contact with authorities in all governmental administration, particularly in the fiscal realm. It also is particularly important that the office maintain close contact with the Ministry of Education since all educational expenditures, including those negotiated, become part of the Ministry's budget and must be explained and defended by it before Parliament to secure the allocation of the funds.

In negotiations the Minister of Education relies on his administrative arm, the State Board of Education, to carry out his functions. He, as is true of the other ministers, serves as a formulator of policy and other agencies responsible to him execute his policies. Because of this manner of operation, the ministries are quite small and the executing agencies large.

Negotiation Procedures--Agreement Reached

With numerous and diversified civil service organizations included in the major negotiation unit for the staff, it is essential that the interests of each association be safeguarded. This is achieved in part by permitting each group or association to formulate its own proposals. For example, the teachers in TCO-S determine what proposals they desire to put forward and prepare explanatory material relevant to their requests. These proposals are submitted to TCO-S for inclusion and consolidation with the requests of other associations. TCO-S nearly always incorporates the requests submitted but has authority to exclude any of the items it deems inappropriate. On one occasion a request of the teachers association was not put forward by TCO-S and considerable resentment among teachers was generated.

The demands of each of the four major negotiation units are considered one by one with all representatives present. Sessions of the smaller interest groups with governmental officials also are held. For example, the teachers in TCO-S meet with the National Collective Bargaining Office on items of particular interest to them.

The number of representatives which the civil service employees have is not considered important and may vary from time to time. Usually 12 representatives are present. The National Collective Bargaining Office, representing government, has one chief negotiator and two or three assistants, although here too little significance is attached to the number. This is true because consensus is usually reached by consideration and discussion of all issues and not by majority vote.

The four national negotiation groups put forward a substantial variety of demands submitted by the several associations. Frequently,

full accord is not achieved among the groups as to what constitutes a satisfactory basis for settlement. As a result, agreement may be reached with one of the four bargaining units and not with the others. However, the different groups tend to support each other and even employees of private industry who are members of TCO support the salary demands of members of TCO-S of which teachers are the major component. However, their support is largely vocal.

When the four main units have reached agreement with the National Collective Bargaining Office the balance of negotiations is automatic since proposals have been cleared with higher governmental officials each step of the way. The teachers have been in constant contact with the Ministry of Education and the other components of the bargaining units with their respective associations and/or governmental agencies. The National Collective Bargaining Office has cleared tentative proposals as well as their financing with all governmental agencies involved in the several aspects of negotiation. The Ministry of the Treasury must provide assurance that the required funds will be available before any final agreement is reached.

The funds for salary increases for teachers and other staff members are incorporated in the budget of the Ministry of Education. When this budget is submitted for approval it is supported by the Ministry of Finance, and accepted by the Parliament Pay Delegation who submits it to Parliament with recommendations for passage. When accepted by Parliament funds are appropriated and taxes are levied to produce the necessary revenue.

When salary agreements have been reached at the national level, municipal negotiations are then concluded. Negotiations at the local level are relatively easy since national pay scales and settlements are adopted with minor variations. Thus, teachers for handicrafts and skilled trade teachers have relatively easy salary negotiations since their locally determined wage scales are based on the national settlements.

Negotiation Procedures--Lack of Agreement

When it is impossible to arrive at an agreement by negotiation, no satisfactory procedure is established by statutes to resolve the impasse. Mediation of a sort is provided but from the employees point of view the procedure lacks the objectivity and impartiality essential to mediation. Under the current system a committee of mediators appointed by the King proposes the salary adjustments to be enacted. However, since the members are appointed by the King they understandably hold the view of government and their proposals are suspect and fail to receive support of either the teachers or other civil service employees.

Negotiation break-downs may result in either a lock-out by employers or a strike by employees. Statutes authorize a strike under certain conditions at certain times. On an earlier occasion only a small active segment of civil service employees supported a strike but it proceeded nevertheless. In 1971 all major civil service employees supported the strike and it continued until the King ordered the employees back to work. Employees in the private sector were sympathetic to the demands of the civil servants but did not join in the strike.

All associations and unions now are attempting to build a substantial conflict (strike) fund but most of them have not yet been able

to do so. Under present circumstances, only selective strikes or ones of short duration are possible.

No one interviewed is convinced that a strike is the proper solution for settlement of an impasse. It is costly to the government, to the associations and to the employees. To date it has been a relatively ineffective instrument for resolution of issues.

Suggested Changes

In spite of all the difficulties encountered in salary negotiations in Sweden, a high degree of satisfaction with the present system was expressed. Only three major changes were suggested. A number of the respondents believed the system must be changed to provide a means for the individual associations to express themselves more fully and bargain more directly. This does not mean that the respondents favored bargaining by occupational groups since they were convinced that their strength was in the present grouping. Rather, they hoped for greater autonomy of the individual association within the bargaining unit.

A second suggested change was to negotiate for salary adjustments after taxes. A number of the respondents were of the opinion that it was futile and frustrating for higher salaried workers to go through hard bargaining sessions only to find that most or even all of the increases granted was consumed by taxes. With the current high taxes this is a constant concern in negotiations.

The third suggestion of major concern to all respondents was to identify a satisfactory method of arriving at a fair settlement by mediation and arbitration and to enact it into law. How this could be done was not clear but that it must be done was imperative. The most fruitful

suggestion in this direction was to analyze the procedures in countries having the most satisfactory plans of mediation and arbitration and adopt the best features of each plan.

Personal Observations

In Sweden the parent organizations are much stronger than in the U.S. and through their national organization called "Home and School" make their voice felt in educational matters, particularly in Parliament. Students, too, are well organized having a national committee and local associations in practically every school. Their major interest is the improvement of education, particularly in legislative matters.

Nearly all of the teachers are included in two organizations--TCO-S with 65,000 teacher-members and SACO with 27,000 teacher-members. There is little competition for members and the associations cooperate on most matters including negotiations. Within the teacher associations there are both some very militant and some extremely conservative teacher units. It was reported that the level of militancy among teachers had increased sharply in recent years. This militancy is directed largely toward receiving greater fiscal rewards through increased salaries and fringe benefits.

However, teachers are not united in attempts to enforce their demands. If one group of teachers goes on strike, for example, the elementary teachers in TCO-S, the secondary teachers in SACO continue to work. If the secondary teachers go on strike, the elementary teachers continue to work. Persons in the private sector cannot be expected to join teachers or civil service employees in striking. This is true in part

because teachers and other civil servants already generally have slightly better fringe benefits than workers in the private sector and strike action is an effort to achieve even more of a differential.

The major difficulties in negotiations stem from two sources: the large number who must receive any benefit granted and the scarcity of funds due to the effort to avoid higher taxes. When even modest benefits are granted to teachers their extension to all other civil servants results in very substantial cost increases. It was the belief of many respondents that with current high tax rates, additional revenue of substantial dimensions was not within the realm of fiscal possibility. Thus, the government representatives operated within serious fiscal constraints. With the current level of taxes, teachers and other civil service employees tended to press for greater fringe benefits such as improved life insurance, retirement benefits, illness payments, medical coverage, etc., rather than salary increases. Actually, the major issue in the 1971 strike was not salaries but the length of the work period prior to collecting pensions. The government desired to increase the time by two years, a proposition resisted vigorously by civil servants and other employees.

The range between minimum and maximum salaries is very narrow for teachers as for other public employees. Higher taxes in the upper brackets further decrease the range in take-home pay. However, better qualified teachers do receive higher salaries than other teachers. These are usually the superior teachers since they typically receive the study grants which permits them to pursue additional training on which higher salaries are based. Headmasters are on a higher salary scale than

teachers and typically enjoy a high degree of job security since they are employed in the school on a six-year contract.

While it is difficult to generalize from a limited number of specialized contacts, one cannot help but be impressed with the high quality and dedication of civil service employees in Sweden. With the efficiency and graciousness exhibited it is easy to envision the expectation and acceptance of more and better governmental services. As a result, the government carries more and more responsibility for the well-being of the people and of necessity has taken a large proportion of their earnings in taxes. In the meantime the demand for more and better supported government services continues while the clamor for lower taxes mounts. The sum total of these factors spell increased difficulty in negotiations of salaries and other fringe benefits for teachers and other civil service employees in the years ahead.

CHAPTER VIII

IMPLICATIONS OF CENTRALIZED NEGOTIATION FOR THE U.S.

The major significance of any study of centralized negotiations in Europe is to be found in the ideas and concepts advanced to those charged with the determination of salaries and fringe benefits, i.e., to negotiators in the U.S. Although beset with problems and difficulties of major dimensions, centralized negotiation does appear to provide some hope for those currently disillusioned and frustrated with negotiations by individual school districts in the U.S.

In the following discussion only implications for statewide negotiations are presented. This does not imply opposition to regionalism in collective negotiations. Actually, regional negotiations may be the next logical step. However, European negotiations appear to relate much more closely to statewide negotiations which are preferred since they eliminate a number of regional steps to the same ultimate solution.

It must be kept in mind that many potential approaches to statewide negotiations exist. Those suggested in this report are only a few of many possibilities. In all probability, no single pattern of centralized negotiation will be applicable in all states. This report attempts only to describe one possible pattern of operation from which each state may formulate variations fitted to its own philosophy and organizational structure. In considering the potential for centralized negotiations in the U.S., only educational negotiations are presented since this was the focal emphasis of the study.

In this report, educational negotiations are viewed within two financial support patterns:

1. Less than 50 percent of the revenue from state sources
2. 50 percent or more of the revenue from state sources

The first category will include most of the states. The second encompasses full state funding of all costs or full state funding of all salaries for teachers. The distinguishing feature in negotiations between categories 1 and 2 above is the composition of the management team. An identification of the management team under each situation is described in the section of the report entitled "Participants in Negotiation."

Issues

The judgment of persons long and intimately associated with centralized negotiations of salaries indicated that it is a serious error to circumscribe the area of negotiation too narrowly. Based on interviews and analysis of centralized negotiations in the six countries studied, it is suggested that all issues with an economic impact be deemed proper items for negotiations. These include salaries, cost-of-living adjustments, cost of innovative programs, compensatory education, smaller class size and any other items which will increase costs. Only those programs which can be achieved without a change in the school budget would be considered non-negotiable.

The rationale for bargaining on all matters having an economic impact is easily apparent. With high federal and, in many instances, high state income taxes for salaried workers, teachers often prefer more

fringe benefits, including lighter teaching loads, more secretarial services, etc., to higher salaries. The relative desirability of alternatives can be considered and sound decisions made only if the negotiators are authorized to bargain on all economic issues. Assuming the generally accepted fiscal and tax constraints, unilateral decisions on educational issues which increase expenditures for educational purposes have a direct and substantial influence on the size of salary adjustments.

To simplify and facilitate negotiations it is suggested that a comprehensive salary scale, which encompasses all professional positions, be established at the outset. Salaries of professional staff other than teachers should be related directly by law to those of teachers to assure a firm "community of interest" of all staff participants. The same items require settlement whether the revenue is provided largely by the local district or the state since the issues in negotiations remain the same regardless of the mix of local and state support.

Participants in Negotiations

The first consideration in determining participation in negotiations is to identify the parties of personal interest and to guarantee expertise in participants or resource personnel. This implies that participants who understand good educational practices must be deeply involved at all points. It requires not only that staff be represented but, because they are personally involved, that state departments of education and parents also be included.

It is suggested that the state parent-teacher association designate a parent and that the chief state school official and the state director of the revenue department each designate a member to serve as

resource persons in negotiations. None of these would represent either side and their responsibility would be largely information-giving and focusing attention on provision of high quality education and its cost. Arrangements should also be made to secure suggestions from students on any proposed major changes directly affecting them.

While the primary purpose of negotiations is the assurance of good education, fiscal considerations also are essential and it is evident that school board members and state departments of revenue officials are required to provide a neat balance of educational and fiscal expertise essential for this process. School board representatives would be the negotiators and an employee of the department of revenue would serve as a resource person. With this combination of representatives, educational and fiscal, it is clear that educational issues which have no economic impact should be studiously avoided in negotiations and be settled in the arena of educational expertise.

If the principle of accountability is accepted, the agencies which represent management would vary, depending on the source of major support. The staff representation would be identical regardless of the support pattern as would the resource people. The negotiators for the staff, the school boards and government would be selected at the discretion of the respective sides. No limitation on the selection should be permitted. Each side should be entitled to the same number of negotiators. It is suggested that seven voting representatives be appointed for each side.

Professional Staff

While the European system of placing all professional workers in education on the same side of the bargaining table would be extremely

difficult in the U.S., the advantages are worth a major effort. It would correct one of the most glaring and grievous deficiencies in the U.S. system of negotiations and would help heal present wounds in the educational system and eliminate the infliction of new ones. This system goes far in achieving good cooperation of all staff members, both in negotiations and after the settlement.

However, it should be recognized that having all professional workers on the same side of the bargaining table is not absolutely essential and statewide negotiations are possible with the superintendent and principals serving on the management team. However, it is strongly urged that all members of the professional educational staff--superintendents, principals supervisors, counselors, teachers and others--sit on the same side of the table and negotiate as a unit. It is further suggested that no effort be made to secure proportionate representation of the several groups and that issues be decided by agreement and not by majority vote as explained under "Negotiation Procedures." Proposed representation of the staff team to assure the expression of varied points of view would be:

State Association of Chief School Officers	1
State Association of H. S. and Junior H. S. Principals	1
State Association of Elementary Principals	1
Teacher Organizations*	<u>4</u>
Total Staff Team	7

It is proposed that statewide negotiations be conducted initially for elementary and secondary schools only. As more experience is gained, centralized negotiation of salaries at all instructional levels could be attempted. This would probably involve somewhat different staff

*Including all professional employees except administrators, i.e.,

representation than is here envisioned. In addition to serving in a resource capacity, the state department of education should serve as secretariat to the total negotiation committee. Counsel should be available for the staff and may be designated as spokesman for the group and participate in all discussions. However, the counsel should not be empowered to vote. He should be selected by agreement of the entire professional staff team.

Management--Less than 50 Percent State Funding

Whether the major funds are allotted from local or state sources would be determined by calculations of the statewide average of school support. When local districts pay the major share of the cost of education, representatives of local school boards should have the strongest voice on the management team. In this situation, it is suggested that the state school board association have five members and the state have two members on the management team. When the state pays 50 percent or more of the costs, it is suggested the division between the local representatives, i.e., the state school boards association and the state be changed.

Alternative I would have five representatives from the state and two from the state school boards association. Alternative II (explained later) would have broadly proportional representation varying with the percent paid by the state.

The representatives from the state school boards association could be the officers of that organization. However, excellent officers are not necessarily excellent negotiators so other approaches should be considered for selection of school board representatives. A practical suggestion

would be to have the officers of the state association designate their representatives for negotiation. This would permit them to designate any officers of the association or others particularly well qualified as negotiators. In most instances the executive secretary of the state school boards association would be named as one of the representatives.

The state's representatives should be appointed by the governor and confirmed by the senate. Suggested appointment would include chairman of the education committee of the senate or assembly,* chairman of the senate or assembly finance committee* or any other legislator or state official. The counsel for the state school boards association or other legal counsel for the management team should attend the negotiation sessions and confer with management as desired. He would not be entitled to vote but could be designated as spokesman for management and participate in all discussions. Seven voting representatives plus the counsel would constitute the management team.

Management--Major State Funding

If 50 percent or more of school revenue is provided by the state, including full state funding, it is suggested that the state be given major voice on the management team--up to five of the seven representatives of the bargaining team. All members would be appointed by the governor and confirmed by the senate. Possibilities for appointment would be additional members from the educational or finance committees, or other members of the legislature. It is suggested that the counsel be designated by the total management team who under normal circumstances would be a representative of the attorney-general's office.

*By whatever name this function is designated.

If it is decided that the abrupt change from major school board control to major state control suggested as Alternative I should be avoided, a more gradual approach could be achieved with no loss in the effectiveness of the negotiation process. The Alternative II mix of state school board association members and state members is suggested below:

<u>Percent of Revenue from State Sources</u>	<u>State School Board Association Representatives</u>	<u>State Representatives</u>
Up to 50 Percent	5 members	2 members
Between 50 and 60 Percent	4 members	3 members
Between 60 and 70 Percent	3 members	4 members
70 Percent or More	2 members	5 members

Even with full state funding it seems desirable to have state school board association representation since it brings a higher expertise to educational considerations than is usually found in legislative halls. School board representation, even with full state funding, is in line with suggestions received from respondents in a number of countries where full funding or nearly full funding by the central government is in operation. Although the number of representatives from the school board association and state appointments would vary according to the pattern of state support the total number of voting members on the management team would be constant--seven in number at all points.

Students

While it is impractical to have students in attendance as resource persons at the negotiation sessions since they would be held while schools are in session, arrangements should be made to secure their points of view and have them presented on all major issues. This could be done by

requesting state organization of student councils to provide a written statement of their stand on all major issues. The responsibility for securing and presenting the statements should be placed on the parent member serving as a resource person to the negotiation committee.

Negotiation Procedures

To be assured that negotiations will move ahead in an orderly manner, it is necessary to have a full contingent of representatives in attendance at all meetings. It is suggested that each side appoint a number of alternates who may be designated by the respective chairmen to represent absent members. The alternates should be entitled to all privileges of the absent members including full power to discuss and vote on all issues.

In addition to the usual contingent of representatives and counsel, it is deemed highly important to have full representation of resource persons on the negotiation committee at all times. Full representation could be achieved by appointment of alternates responsible for attending any sessions which the duly elected representatives are unable to attend.

It is suggested that prior to the first meeting of the total negotiation committee which is a combination of management and staff representatives, each side meet independently and select a chairman. The chairman selected should be acceptable to all subgroups within each negotiation unit and not be elected by majority vote. In this action, as in all other phases of negotiation, agreement must be reached. If agreement cannot be achieved at any point, negotiations are deemed to have failed and mediation is initiated. Each group also selects a spokesman who may or may not be the chairman. Only one point of view may be

expressed in the total negotiation committee sessions although different spokesmen may be designated to present different parts of the requests or speak to different issues. All requests to be presented must be agreed to by the staff team prior to the first meeting of the total negotiation committee. It is essential that the requests be prepared in written form with full written explanation and documentation and handed to the members of the management team at the first meeting. The prepared written material becomes the basis of the oral report made at the first meeting of the total negotiation committee. The chairman of the staff side and of the management side should alternate as chairman of the total negotiation committee.

It is further suggested that the management team, in addition to selection of a chairman and spokesman prior to the first meeting, consult appropriate governmental and other agencies and secure information which will assist them in arriving at a global amount of expenditure increases for salaries and other benefits which are considered reasonable and supportable.

At the first meeting of the total negotiation committee, staff representatives present their requests explaining them in detail and presenting justification for them. Any representative from either side may ask questions and make comments. It is assumed that all staff representatives will support the requests and speak in their support as appropriate. However, the merits of the requests are not debated at the first meeting and all questions asked by management should be directed toward securing more information. After the presentation the meeting is adjourned to permit management to analyze the requests and estimate the costs. It is

suggested that management either accepts the proposal as reasonable or prepares a counter proposal with full explanation and documentation which is then presented at the following meeting.

It is anticipated that with the presentation of the counter proposal full scale negotiations will ensue. It is suggested that preliminary negotiations be conducted by subcommittees selected from the staff and management sides and that tentative agreements be returned to the staff and the management sides for approval. While in practice the tentative agreements of the subcommittees may be accepted, there should be no expectancy that this will be the case. Decisions should be made by the staff and management sides with full agreement by the representatives of each of the associations or agencies represented within each group. If either the staff or management fails to agree with the subcommittee, the issue is brought to the total negotiation committee for consideration and suggestions.

To enhance the possibility of arriving at a settlement in negotiations, it is essential that each party be able to make its best offer without fear of being placed at a disadvantage at some future time. This can be accomplished only if each party has the privilege of making an offer "without prejudice." This type of offer stands only if accepted in full settlement. If it does not achieve full settlement it is withdrawn and has the status of never having been made. Neither party is privileged to refer to the offer at any point in future negotiations.

If agreement cannot be reached in a reasonable length of time, explained later under "calendar," mediation should be provided. It is suggested that the mediator be selected by the chairman of management,

the chairman of the staff team and a third person selected by them. It is anticipated that agreement on the mediator can be reached but if not he should be selected by the impartial third member of the selection committee. The mediator's function is to secure agreement of the two sides. He may do this by any method or procedure he deems appropriate, meeting with individuals, groups, joint sessions, etc. He may request new position statements from one or both parties. No limitations should be placed on him except a time constraint, explained later.

If mediation is unsuccessful or if the time allotted for mediation has expired, an impasse is declared and advisory arbitration is required. It is suggested that a three-man arbitration panel be established whose function is to arrive at a fair and just settlement without regard to the proposals either party has offered or agreed to accept previously. Because of the extensive authority placed in the arbitration panel, every effort must be made to assure its neutrality and objectivity. While any number of possible appointment procedures is available and different procedures may be most appropriate in different states, one suggestion is selection of three persons acceptable to both the professional staff and management. A list of potential arbitrators could be prepared by the resource persons on the negotiation panel but the choice should not be limited to such a list. While no restrictions should be placed on the persons to be appointed, they obviously should not be associated with management, professional educational staff, or government.

If either side refuses to accept the decision of the arbitration panel, the issues must be returned to negotiation for further action. If the issues cannot be satisfactorily resolved, binding arbitration may be

the only alternative. However, it is recommended that advisory arbitration be instituted in the initial trial of centralized negotiation.

When agreement is achieved in negotiation, mediation or advisory arbitration, the representatives of management, staff and government must be given full authority to conclude an effective and legal settlement without ratification of any type. To require formal ratification of agreements immeasurably increases the difficulty of achieving a successful settlement by negotiations, mediation or advisory arbitration. However, any group or agency should be empowered to call a meeting or meetings of its members or representatives to consider a tentative agreement and secure reactions.

Calendar

To guarantee that negotiations do not stretch out indeterminately, it is suggested that a definite calendar be established. It is proposed that negotiations be limited to three months with one additional month for mediation and another for advisory arbitration. If negotiations are started October 1, they then would be completed by the end of December. Mediation would be completed in January and arbitration by the end of February. This calendar would settle salary and fringe benefits issues in ample time to draw and issue contracts by March 15, as required by continuing contract laws in several states, assuming the decision of the advisory arbitration panel is accepted.

It is suggested that contractual agreements be negotiated for a two-year period. Three years is unsatisfactory in this period of rapid economic change and one-year contracts involve school systems, staff and

governmental officials in almost constant negotiations. The sooner the vital problems of salaries, fringe benefits, and other items having an economic impact are settled, the sooner full attention can be devoted to the more vital area of educational improvement. Even within a two-year period, cost-of-living changes are likely to be drastic and provision must be made to adjust salaries in line with cost-of-living when it changes by more than an agreed percentage. This item should be negotiable and settled during the bargaining sessions. In fairness, cost-of-living adjustments should be made retroactive so the salaries agreed upon will have a constant purchasing power through the contract period.

Labor Court

Since some interpretation of the contractual agreement, including the proper placement of members of the staff on the salary scale, is often necessary, it is suggested that a labor court be established with full authority to interpret all parts of the agreement. The interpretations of the labor court should be final except for an appeal to courts of law.

It is suggested that the labor court be composed of the chairman of the staff team, the chairman of management, and the three resource persons from the total negotiation committee. The chairman of the labor court should be selected from among the five members. Members of the labor court should have access to legal counsel from both the legal advisor to the department of education and the office of the attorney general. It is to be understood that staff members are to exhaust all internal grievance procedures within the district prior to any appeal to the labor court.

Cost of Negotiation

It is suggested that the state establish a scale for payment for all representatives and officials engaged in negotiation and pay all costs. When representatives are already on some state or agency payroll, it will be reimbursed at the specified rate. Payment by the state will guarantee that all parties will be treated comparably and be basically on the same financial footing. This suggestion, if adopted, would eliminate one of the deserved criticisms of negotiation in the U.S. where teachers' tax dollars assist in payment of the costs of negotiations of school boards which are supported by public funds while paying their own costs through membership dues. No organization should be limited in utilizing its research, legal and other resources.

Potential of Centralized Negotiation

No one even casually acquainted with centralized negotiations of staff salaries in foreign countries would predict instant success of such a system in the U.S.; one realistically must recognize that centralized negotiations encounter major problems even where it is the "law of the land" and where years of experience prevail. To expect less difficulties and fewer problems in the U.S. would be naive indeed. Yet, with its many shortcomings centralized negotiations does appear to have the potential of being a superior method for determination of staff salaries and fringe benefits in education. It appears worth a sound trial in at least some states.

In the first trial of centralized negotiations in a state in the U.S., it is strongly urged that there be established a state-adopted

salary scale and fringe benefits which local teachers associations and school districts would be authorized to accept or reject. If rejected, school districts could bargain with their staff in their individual district as in earlier years. Hopefully, statewide settlements which may be accepted or rejected in the local districts could be reached without mediation and arbitration, permitting localities ample time for local negotiations. This approach to negotiations would permit the development of a plan fitted to the needs of individual districts of the state before it would become effective statewide. It is assumed that after a trial period, statewide negotiated settlements would be binding on all school districts and their professional staff. Adopting an interim trial procedure would assure that centralized negotiations would have the best opportunity of becoming a more effective and efficient method of salary and fringe benefit determination in the U.S.

DOCUMENT RESUME

ED 078 580

EA 005 261

TITLE Tort Liability and Liability Insurance. School Law Summary.

INSTITUTION National Education Association, Washington, D.C. Research Div.

PUB DATE Mar 69

NOTE 18p.

AVAILABLE FROM National Education Association, 1201 Sixteenth Street, N. W., Washington, D. C. 20036 (Stock #431-22828, \$.50)

EDRS PRICE MF-\$0.65 HC Not Available from EDRS.

DESCRIPTORS *Indemnity Bonds; *Insurance Programs; *School Districts; *School Law; *State Legislation; State Surveys

IDENTIFIERS *Tort Liability

ABSTRACT

This report contains a compilation of State-by-State statutory provisions relating to the tort liability of school districts and to their purchase of liability insurance. The statutory provisions described herein reveal various degrees of governmental immunity made available to school districts. (JF)

ED 078580

School Law Summaries
Compiled by the NEA Research Division
1201 Sixteenth Street, Northwest
Washington, D. C. 20036

TORT LIABILITY AND LIABILITY INSURANCE

March 1969

PERMISSION TO REPRODUCE THIS COPY
RIGHTED MATERIAL BY MICROFICHE ONLY
HAS BEEN GRANTED BY

NEA

TO ERIC AND ORGANIZATIONS OPERATING
UNDER AGREEMENTS WITH THE U.S. OFFICE
OF EDUCATION. FURTHER REPRODUCTION
OUTSIDE THE ERIC SYSTEM REQUIRES PER-
MISSION OF THE COPYRIGHT OWNER

General Information

Contents

This compilation is a state-by-state summary of statutory provisions relating to the tort liability of school districts and to their purchase of liability insurance.

Reporting and Revision Scheme

The information that follows is another section of the school law series conceived as a continuing legislative reporting service of the NEA Research Division, aimed at providing up-to-date information on certain types of school legislation in each state.

This material will be revised on an irregular basis as changes in the law warrant. Since the material presented does not justify separate page treatment for each state, the entire section will be replaced at one time. All changes through the 1968 legislative sessions are included.

General Comments

Although governmental immunity of school districts from liability for their own torts or those of their agents, officers, or employees, is still the rule in most jurisdictions, judicial and legislative inroads have been made into this common law doctrine in the past five years. In the absence of statute or court decision holding the school district liable, teachers, supervisors, and administrators are personally responsible for damages for injuries inflicted on pupils as a result of their negligent act or omission. If no insurance is provided by the school district, any judgment rendered against them must be met out of personal funds.

Governmental immunity is no longer available to school districts by judicial decree in Arizona, Illinois, and Wisconsin. In California, Hawaii, Iowa, Nevada, Oregon, Utah, and Washington, statutes have waived this immunity in varying degrees. Immunity was judicially waived in Minnesota but reinstated by the legislature for school districts with a provision that it no longer would be available after January 1, 1970. School districts must save harmless and indemnify employees against whom judgments are rendered for school-connected torts in Connecticut, Massachusetts, New Jersey, and New York. Wyoming permits school districts to indemnify employees.

An NEA publication, Who Is Liable for Pupil Injuries? (prepared by the Research Division in 1963 for the National Commission on Safety Education) contains a thorough discussion of the principles behind the doctrine of sovereign immunity as well as the types of liability in which teachers and school districts might find themselves involved.

Even in the states where school districts still enjoy governmental immunity, they are generally either required or permitted to carry liability insurance to cover the operation of school buses. Apart from the statutory provisions relation to school bus insurance, which are not included in this summary,

U.S. DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION
THIS DOCUMENT HAS BEEN REPRO-
DUCED EXACTLY AS RECEIVED FROM
THE PERSON OR ORGANIZATION ORIGIN-
ATING IT. POINTS OF VIEW OR OPINIONS
STATED DO NOT NECESSARILY REPRESENT
OFFICIAL NATIONAL INSTITUTE OF
EDUCATION POSITION OR POLICY

EA 005 261

at the present time California requires and 22 other states expressly authorize school districts to carry liability insurance. In Illinois the statute is mandatory for Chicago and permissive for the rest of the state. These laws allow school districts to protect themselves or their agents, officers, or employees against damages for injuries to persons or property arising out of their negligent or wrongful acts or omissions while acting in the discharge of their duties within the scope of their office or employment. Summaries of these statutes are set out in Part I. For those states where save harmless statutes or laws imposing direct liability on school districts prevail, the abstracts of such legislation are also included.

In five states there are statutory provisions relating to liability insurance that may be applicable to school districts also, although school districts are not specifically mentioned. These laws are described in Part II.

It should be noted that in states where there is no express statutory authority to purchase liability insurance, school districts may be relying on their implied powers to buy coverage; in some of these states, however, school districts may be unable to procure liability insurance in the absence of specific statutory authority.

One should be aware, also, that even when school districts are empowered to carry liability insurance, whether for school transportation or otherwise, provisions in the law differ with respect to the waiver of governmental immunity. Some statutes expressly provide that the district's immunity is waived, some are silent, and still others are quite specific that the immunity is waived to the extent of the insurance obtained. A few state laws make it clear that the insurance company is the party to be sued, or that the insurer may not assert the defense of governmental immunity.

Unless there is express waiver by statute, it is the prevailing judicial view that the existence of insurance coverage does not affect the school district's immunity from tort liability, and most courts will not accept a suit against an immune school district, even if only to determine the amount of damages the insurance company is to pay. To overcome this difficulty and to derive the protection the premium has purchased, it is advisable to write into the insurance policy a provision that the claimant may maintain a direct action against the insurance company, and that the defense of governmental immunity is not to be asserted by the insurer. The more desirable method is a change in the statute to permit suits against school districts where there is liability insurance coverage.

On the other hand, a few courts have held that when insurance coverage has been purchased, the school district's immunity from tort liability is removed to the extent of the policy amount. This judicial minority reasons that the primary purpose of the immunity doctrine--to protect public funds--no longer exists when insurance protection is secured.

The doctrine of sovereign immunity has been viewed as archaic and unjust. Acceptance of this view is evidenced in the trend to abrogate this doctrine by statute or judicial decree. Pupils injured as a result of negligence by school employees are assured recompense for damages directly or indirectly from school districts in 14 states either because governmental immunity has been abrogated or because school districts are required by statute to indemnify school employees against financial loss. In 18 other states, there is a possibility of recovery of damages by pupils if liability insurance has been secured.

TORT LIABILITY AND LIABILITY INSURANCE

March 1969

PART I. STATUTORY PROVISIONS RELATING TO TORT LIABILITY OF SCHOOL DISTRICTS AND PERMITTING THE PURCHASE OF LIABILITY INSURANCE

ARIZONA

Liability of School Districts

Since the 1963 decision in Stone v. Arizona Highway Commission (381 P. (2d) 107), governmental immunity from tort liability has been abolished and all previous Arizona decisions upholding such immunity are overruled. School districts are included in this general disclaimer of immunity.

Insurance

Although school districts are not specifically included, following the Stone decision a statute was passed authorizing the purchase of liability insurance covering officers, agents, and employees of the state, its boards, departments, and agencies. (Arizona Revised Statutes. Sec. 38-41)

CALIFORNIA

Statutory Liability of School Districts

A public entity, including a school district, is liable for injury caused by a dangerous condition of its property, if the injured party establishes that the property was in a dangerous condition at the time of the injury, that this condition proximately caused the injury, that the injury was reasonably foreseeable because of the dangerous condition and that either a negligent or wrongful act or omission of an employee within the scope of his employment created the dangerous condition or that the public entity had actual or constructive notice of the dangerous condition a sufficient time prior to the injury to have corrected it. A public entity is also liable for an injury proximately caused by an act or omission of an employee acting within the scope of his employment if the act or omission would have given rise to a cause of action against the employee.

Under this statute, injury means death, injury to a person, damage to or loss of property, or any other injury that a person may suffer to his person, reputation, character, feelings, or estate. (California Government Code. Secs. 810, 815.2, 835)

Liability Insurance

The governing board of any school district must insure against liability of the district and personal liability of the members of the board, officers, and employees of the district for damages for death, injury to a person, or damage or loss of property caused by the negligent act or omission of the member, officer, or employee when acting within the scope of his employment. (California Education Code. Sec. 1017.)

COLORADO

Boards of education have the discretionary authority to procure liability insurance covering the school district, its directors, and employees. Each insurance policy purchased shall contain a provision that the carrier will not assert the defense of sovereign immunity within the limits of the policy. The failure to provide insurance shall not create any liability against the school district. (Colorado Revised Statutes. Secs. 123-30-10(23), 123-30-11)

CONNECTICUT

Mandatory Save Harmless Law

Protected under this law are the following: any school-board member, teacher, or other school employee, or any member of the supervisory or administrative staff, and any student teacher doing practice teaching under the direction of a teacher employed by a town or state board of education. The provision also extends to the state board of education and its employees as well as members of the commission on higher education.

The school boards are required to save these individuals harmless from financial loss and expense, including legal fees and costs arising out of any demand, claim, suit, or judgment by reason of alleged negligence or any act resulting in accidental bodily injury or death to any person, or damage to any property in or out of the school building, provided that the teacher, member, or employee was acting in discharge of his duties within the scope of his employment or under the direction of the board of education at the time of the accident.

Insurance

Boards of education may purchase liability insurance to cover persons protected under the save harmless statute or elect to act as self-insurers.

(Connecticut General Statutes Annotated, Revision of 1958. Secs. 10-235, 10-236)

FLORIDA

The county boards of education are authorized to provide legal services for the employees of the boards who might be sued in tort for accidents which occur while they are on active duty supervising students. (Florida Statutes Annotated. Sec. 230.234)

HAWAII

The 1957 State Tort Claims Act waived governmental immunity of the state of Hawaii and any of its agencies, for liability for certain torts, including negligence, of its employees. Excepted from the law are punitive damages, actions for assault and battery, libel and slander, false imprisonment, misrepresentation, deceit or interference with contract rights.

State agencies include the executive departments, boards, and commissions of the state; employees of the state include officers and employees of any state agency.

Since Hawaii public-school teachers are employed by the state department of education, the provisions of this law are applicable to them. (Revised Laws of Hawaii, 1955. 1960 Supplement, Ch. 245A)

ILLINOIS

Statutory Liability

Following the 1959 decision in Molitor v. Kaneland Community School District No. 302 (163 N.E. (2d) 89) abrogating governmental immunity of school districts, the legislature declared it to be public policy that school districts, in the exercise of their purely governmental functions, be protected from the excessive divergence of their funds for purposes not directly connected with their statutory function if liability is imposed by a court. Therefore, the statute enacted specified that recovery from a school district would be limited to \$10,000 and that written notice of injury must be filed with the school district within six months of the date of injury. These two provisions were subsequently declared unconstitutional by the courts. In Lorton v. Brown County Community Unit School District No. 1 (220 N.E. (2d) 161 (1966)) the Illinois Supreme Court held that the notice requirement constituted special legislation and was therefore void. The \$10,000 limitation was found to be arbitrarily formulated in that it applied only to school districts (Treece v. Shawnee Community Unit School District No. 84, 233 N.E. (2d) 550 (1968)). However, a provision requiring that any civil action against the school district be brought within one year has been left intact by the courts. (Smith-Hurd Illinois Annotated Statutes. Ch. 122, secs. 821-831)

Save Harmless Statute

It is the duty of school boards to indemnify and protect school districts, members of school boards, employees, and student teachers against death, bodily injury, and property damage claims and suits, including the cost of defense, whenever damages are sought for wrongful acts alleged to have been committed in the course of employment.

Insurance

The Chicago board of education shall have the duty to insure any member of the board, or any agent, employee, teacher, officer, or member of the supervisory staff of the school district against financial loss and expense, including reasonable legal fees and costs arising out of any claim brought against such person for alleged negligence or other wrongful act resulting in death, bodily injury, or property

School boards, other than Chicago, shall have the power to insure against any loss or liability of the school district, members of the school boards, employees, and student teachers, by reason of death, bodily injury, and property damage claims and suits, including defense thereof, when damages are sought for negligent or wrongful acts allegedly committed within the scope of employment or under the direction of the school board. (Smith-Hurd Illinois Annotated Statutes. Ch. 122, secs. 10-20.20, 10-20.3, 34-18.1)

INDIANA

The individual school boards may purchase insurance protecting the school corporation, members of the governing body, employees, contractors, and agents from any liability, risk, accident, or loss relating to any school property, contract, activity, or related activity for acts committed in the course of employment. (Burns Annotated Indiana Statutes. Sec. 28-6410 (14))

IOWA

Statutory Liability

Effective in January of 1968, every municipality, defined to include school districts, is subject to liability for its torts and those of its officers and agents acting within the scope of their employment or duties, whether arising out of a governmental or proprietary function.

Under this statute, tort means every civil wrong which results in wrongful death or injury to person or injury to property and includes but is not restricted to actions based on negligence, breach of duty, or nuisance.

Knowledge of the defect or the existence of an alternate safe route will serve as a defense to an action. Torts arising out of the execution of a statute, ordinance, resolution, rule, or regulation will not be actionable. A remedy obtained against a municipality is exclusive as against the employee. An action must be brought within three months unless the municipality is given notice of the tort within 30 days of its occurrence.

Save Harmless Law

The governing body of a municipality shall defend any of its officers and employees and shall save harmless and indemnify such officers and employees against any tort claim or demand arising out of an alleged act or omission occurring in the performance of duty.

Insurance

Municipalities may purchase liability insurance which acts as a waiver to all exceptions to this statute. (Iowa New

KANSAS

The board of education of a unified school district may provide legal counsel at district expense to any members of the board of education, school district officers, or employees who are sued in situations relating to and arising out of the performance of their office or employment: Provided that no teacher or other employment contract shall make reference to or incorporate the provisions of this sentence; nor shall the provisions of this sentence be construed as any part of the consideration of employment of any teacher, officer, or other employee of the board. (Kansas Statutes Annotated, 1967 Supplement. Sec. 72-6754)

MAINE

Superintending school committee and school directors may, at their discretion, pay the premiums on liability insurance for employees and school officials. (Maine Revised Statutes Annotated. Ch. 20, sec. 473)

MASSACHUSETTS

Mandatory Indemnification Law

A school district must indemnify a school employee in a capacity requiring certification, for expenses or damages he sustained by reason of a claim against him for negligence or other act committed in the course of his employment which results in accidental bodily injury, death, or accidental damage to or destruction of property. The school district may indemnify the employee for damages sustained in an action against him arising out of any other acts committed in the course of his employment. (Annotated Laws of Massachusetts. Ch. 41, sec. 100C)

Insurance

A town may appropriate funds to pay premiums for liability insurance covering the situations above. (Annotated Laws of Massachusetts. Ch. 40, sec. 5(1))

MICHIGAN

Liability of School Districts

In 1965 the Michigan Supreme Court held that the defense of governmental immunity was no longer available to political subdivisions of government (Myers v. Genesee County Auditor, 133 N. W. (2d) 190). Subsequent decisions have upheld the immunity of school districts on the theory that the state is clothed with absolute sovereign immunity and that a school district is an agency of the state rather than a political subdivision.

A statute provides that governmental agencies, including school districts, are liable for injury and property damage caused by the negligent operation of a motor carrier or a dangerous or defective condition of a public building but not a latent defect. It is specifically provided that the

Insurance

Governmental agencies are authorized but not required to pay counsel fees and any claim for injuries to persons or property caused by the negligence of an employee acting within the scope of his employment. Liability insurance may be purchased by the agency but does not operate as a waiver of immunity. (Michigan Statutes Annotated. Sec. 3.996(101))

MINNESOTA

Statutory Liability

Every municipality is subject to liability for its torts and those of its officers, employees, and agents acting within the scope of their employment. Exceptions are made for executions of statutes and discretionary acts. Maximum liability is \$25,000 when the claim is one for death by wrongful act or omission, and \$50,000 for any other claim; \$300,000 is the limit for all claims arising out of a single occurrence. No award may include punitive damages.

Notice must be given to the governing body of the municipality within 30 days of the injury. No action may be brought unless the requisite notice is given and the action is brought within one year of the injury.

(NOTE: These provisions are not applicable to school districts unless insurance is procured.)

Governmental immunity from tort liability is enacted as a rule as statutory law applicable to all school districts in the same manner and to the same extent as it was applied on and prior to December 13, 1962, notwithstanding the Spanel v. Mounds View School District (118 N.W. (2d) 795) decision wherein the court abrogated the governmental immunity rule.

However, this section granting immunity to school districts is intended to expire on January 1, 1970.

Insurance and Legal Counsel

Municipalities (including school districts) may procure insurance against their liability and that of their officers, employees, and agents for damages resulting from torts, including those for which the municipality is immune. The amount of insurance may be in excess of the maximum liability established by the statute. Procurement of insurance constitutes a waiver of immunity to the extent of the liability stated in the policy, but has no effect on the liability of the municipality beyond the coverage provided.

Another section specifically provides that the governing body of any independent school district may procure against the liability of the school district or its officers and

contract of insurance must provide for a waiver of the defense of immunity by the insurer up to the limits of the policy.

Upon written request of the teacher involved, a school district must provide legal counsel for any school teacher against whom a claim is made for recovery of damages in any tort action for negligence committed in the course of employment.

Provision of counsel shall not be construed to render the school district liable for its torts except as otherwise provided by law, or as making the school district liable for payment of any judgment, costs, or disbursements where such is rendered against the teacher and not the school district.

Save Harmless--Authority To Indemnify Employee

The governing body of a municipality, including school districts, may defend, save harmless, and indemnify any of its officers and employees against any tort claim, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of duty. This provision does not apply in the case of malfeasance in office or willful conduct or wanton negligence. The governing body of any municipality may compromise, adjust, and settle tort claims against the municipality and may appropriate money for the payment of amounts agreed upon. Any settlement above \$2,500 shall not be effective until approved by the district court. (Minnesota Statutes Annotated. Secs. 466.01--466.12, 127.03, 123.41)

MONTANA

The board of trustees of a school district, county high school, junior college, or community college is authorized to purchase insurance coverage for the school district, school officials, and employees against liability for the death, injury, or disability of any person or damage to any property. The defense of sovereign immunity cannot be raised by either the insurer or the insured, and no attempt may be made to bring the existence of insurance into issue at trial. (Revised Codes of Montana 1947. Sec. 75-1645)

NEVADA

Statutory Liability

The state has waived all immunity from liability of all political subdivisions of the state and has consented to have their liability determined in accordance with the same rules of law as applied to civil actions against individuals and corporations.

An action may be brought against any political subdivision, including a school district, except an action based on an act or omission arising out of the execution of a statute

discretionary function. No award may include punitive or exemplary damages or may exceed \$25,000 for a single claimant. Claim must be presented to the governing body within six months and no action may be brought unless the governing body refuses to approve the claim or fails to act within 90 days. The governing body may approve any claim to the extent of \$1,000 and pay such claim out of its funds.

Insurance

The state and any political subdivision may insure itself and any employee against tort liability and the expense of defending a claim. (Nevada Revised Statutes. Secs. 41.031--41.038)

NEW HAMPSHIRE

Permissive provisions for the purchase of insurance appear in two sections:

(1) School districts may raise money to procure insurance against such risks of loss, cost, or damage to itself, its employees, or its pupils as the school board may determine.

(2) It is lawful for the state or municipal subdivision, including school districts, to procure liability insurance. In any action against a government unit which has procured insurance, neither the insurer nor the insured shall be allowed to plead as a defense, immunity from liability resulting from a governmental function. Liability shall be determined as in the case of a private corporation, but shall not exceed the limits of the insurance coverage. (New Hampshire Revised Statutes Annotated. Secs. 194:3 and 412:3)

NEW JERSEY

Mandatory Save Harmless Law

It is mandatory that whenever any civil action has been brought against any person holding any office, position, or employment, including any student teacher, for acts or omissions arising out of the performance of duties, the board of education shall defray all costs of defending the action, including reasonable counsel fees and expenses, together with the costs of appeal, if any, and shall save harmless and protect that person from any financial loss.

Additional sections extend the same provisions to the employees of the department of higher education and members of the state board of education.

The school board must also reimburse members and employees for the cost of defending a criminal action should final disposition result in favor of the employee.

Insurance

The school board may purchase appropriate insurance to maintain the protection outlined above. (New Jersey Statutes Annotated. Secs. 18A:12-20, 18A:16-6, 18A:16-6.1, 18A:60-4)

NEW MEXICO

The liability insurance statute states that its purpose is to provide a means for recovery of damages for death, personal injury, or property damage resulting from the employer's or employee's negligence occurring during the course of employment by the state, county, city, school district, and other public agency or corporation, its officers, agents, and employees.

These units may insure against liability for damages resulting from the negligence or carelessness of officers and employees during the course of their employment, and for such damages resulting from the dangerous condition allegedly due to their negligence or carelessness. The premium for the coverage is a proper charge against the treasury of the government unit.

Law suits may be maintained against the government units, including school districts, and the persons involved, for negligence of officers, agents, or employees occurring in the course of employment; provided, no judgment shall run against any of these government units unless there is liability insurance to cover the amount and cost of such judgment. Plaintiff shall on demand of the defendant waive the amount of any judgment not covered by liability insurance. (New Mexico Statutes, 1953 Annotated. Secs. 5-6-18--5-6-22)

NEW YORK

Mandatory Save Harmless Law

Boards of education are required to save harmless and protect all teachers, practice or cadet teachers, and members of the supervisory staff or employees from financial loss arising out of any claim, demand, suit, or judgment by reason of alleged negligence or other act resulting in accidental bodily injury to any person or accidental damage to any property inside or outside the school building, provided the individuals thus protected, at the time of the accident or injury, were acting in the discharge of their duties, within the scope of their employment and/or under the direction of the school board.

Insurance

The school boards may arrange for and maintain appropriate insurance or may elect to act as self-insurers to maintain the protection outlined above.

necessarily incurred in the defense of a teacher, or member of the administrative and supervisory staff, or employee in any civil or criminal action arising out of disciplinary action taken against any pupil while in the discharge of his duties.

The school boards may arrange for and maintain appropriate insurance or act as self-insurers for this protection.
(New York Education Law. Secs. 2560, 3023, and 3028)

NORTH CAROLINA

Every county or city board of education is authorized and empowered to pay premiums for liability insurance for damages by reason of death or injury to person or property caused by negligence or tort of its agent or employee.

Any school board securing liability insurance is authorized to waive its governmental immunity from liability for damages due to negligence or tort of any agent or employee acting in the scope of authority or course of employment. Such immunity shall be deemed waived by the act of securing insurance but only to the extent that the board is indemnified by insurance for such negligent act or tort.

By issuing the policy, the insurer waives any defense based on governmental immunity. The contract by its terms must adequately insure against liability for damages proximately caused by negligent acts or torts of agents or employees of the school board or the agents or employees of a particular school in a county or city administrative district, when acting within the scope of their authority or in the course of their employment. Any person sustaining damages may sue the insured county or city school board in a state court. It shall be no defense that the negligence or tort complained of was in pursuance of governmental, municipal, or discretionary function of such school board, if, and to the extent, it has liability insurance coverage.

School boards may incur liability under this section only with respect to claims arising after insurance was procured and during the time when such insurance was in force.

Liability shall not attach unless the plaintiff waives the right to have all issues of law or fact relating to insurance determined by a jury. But the defendant may request a jury determination on this issue.

These provisions do not apply to damage claims caused by negligent acts or torts of a public-school bus driver or a driver of a school transportation service vehicle, the operation of which is paid for out of the state's nine-month school fund (For damage claims of this nature, see sections 115-193 and 143-300.1). (General Statutes of North Carolina. Sec. 115-53)

agents acting within the scope of their employment, whether governmental or proprietary. Exceptions are made for acts or omissions committed in the execution of a statute or the performance or failure to perform a discretionary function.

Recovery is limited to \$25,000 for property damage. Up to \$50,000 may be recovered by one person for bodily injury or death, but no more than \$300,000 may be paid in damages arising out of a single occurrence. No award may include punitive damages.

Notice of the property damage, injury, or death must be given to the public body within 45 days from the occurrence, and action must be commenced within one year.

Save Harmless Law

Public bodies may save harmless, indemnify, and defend their officers, employees, and agents for claims and actions brought against them for acts and omissions committed in the course of their employment.

Insurance

Any public body may purchase liability insurance to cover any liability imposed under this statute. (Oregon Revised Statutes. Secs. 30.260--30.300)

PENNSYLVANIA

The school board in every school district has full power and authority to enter into insurance contracts for the purpose of insuring every employee of the district against liability for damages sustained by pupils or others as a result of the employee's negligence in the performance of his or her duties during the course of employment. (Purdon's Pennsylvania Statutes Annotated. Title 24, Sec. 7-774)

SOUTH DAKOTA

School boards are empowered to carry public liability insurance protecting their employed personnel against liability suits which may be brought against them for acts of negligence while performing their duties as employees of the school district. (South Dakota Code of 1939. 1960 Supplement. Sec. 15-3815)

UTAH

Statutory Liability of School Districts

Governmental immunity of the state, any of its agencies and political subdivisions, including school districts, has been waived in suits for any injury caused by a defective or dangerous condition of any public building or structure, excluding a latent defect; any injury resulting from the negligent operation of a motor vehicle by an employee (other than emergency vehicles) within the scope of his employment;

from injury proximately caused by the negligent act or omission of an employee in the course of his employment. Excepted from this act are injuries resulting from the performance or failure to perform discretionary acts, injuries arising out of assault, battery, false imprisonment, malicious prosecution, libel, slander, deceit, interference with contract rights, infliction of mental anguish, invasion of privacy or of civil rights and misrepresentation.

Notice of claim must be filed with the attorney general within one year after the cause of action arises and with the political subdivision within 90 days. Approval or denial of the claim must be given to the claimant within 90 days from the time he filed. No action by the subdivision within this time is deemed a denial.

Suit may be brought within one year of the denial of the claim or the end of the time for an answer. Plaintiff must file an undertaking with the court of at least \$300 conditioned upon payment by plaintiff of the taxable costs incurred by the government if he fails to either prosecute the claim or recover judgment. Recovery against the government entity is a complete bar to any action against the employee.

Insurance

Government entities, including school boards, may purchase liability insurance against the risks arising out of the application of the statute above. Each policy shall provide for coverage of not less than \$100,000 for injury or death of one person in one accident and not less than \$300,000 for two or more persons in any one accident; property damage limits must be \$50,000 for a single accident. Each policy must include a provision that the insurer agree not to insert the defense of sovereign immunity.

Government entities may insure with public funds, any or all their employees against all or any part of their liability for injury or damages resulting from a negligent act or omission in the scope of their employment, regardless of whether the governmental entity is immune from suit for such act or omission.

If a judgment or award against a governmental entity exceeds the minimum insurance amounts specified above, the court shall reduce the amount of the judgment to the minimum requirement, but if the insurance coverage purchased exceeds the minimum required, the reduction shall be to the applicable limits of the policy. (Utah Code Annotated, Secs. 63-30.1--63-30-34)

tortious conduct or the tortious conduct of their officers, agents, or employees to the same extent as if they were a private person or corporation.

Insurance

School districts may make available liability insurance for members of boards, students, and employees. Such insurance will be paid for by the school district. (Revised Code of Washington Annotated. Secs. 35.10, 28.76.410)

WEST VIRGINIA

Boards of education shall have the authority to provide, at public expense, adequate public liability insurance. Any policy purchased must contain a provision whereby the issuer waives the defense of governmental immunity. This waiver shall operate only up to the coverage of the policy. (West Virginia Code. Sec. 18-5-13)

WISCONSIN

Since the 1962 decision in Holytz v. City of Milwaukee, (115 N.W. (2d) 619) governmental immunity from tort liability was abolished and all previous Wisconsin decisions upholding such immunity were overruled.

No tort action may be maintained against a political corporation, government subdivision, or agency nor against any officer, official, agent, or employee of such corporation, subdivision, or agency for acts done in their official capacity or in the course of their agency or employment unless signed written notice of time, place, and circumstances of the happening or event causing injury, damage, or death is served within 120 days of the occurrence. Failure to give the required notice is no bar to the claim if the entity had actual notice of the damage or injury, and if the injured party shows to the satisfaction of the court that the delay or failure in giving notice was not prejudicial to the entity.

The amount recoverable for damages, injury, or death in any one action is limited to \$25,000 whether proceeded against jointly or severally. No punitive damages will be allowed.

No suits are permitted against a political corporation, government subdivision, or agency for intentional torts of its officers, officials, agents, or employees, or for acts done in legislative, quasi-legislative, judicial, or quasi-judicial functions.

These limitations are exclusive and shall apply in all tort actions unless rights and remedies are provided by other statutes. This section does not bar action against an individual for an intentional tort. (Wisconsin Statutes Annotated. Sec. 895.43)

from financial loss arising out of any claim, demand, suit, or judgment by reason of alleged negligence or other act resulting in accidental bodily injury to any person inside or outside the school building, provided the individuals thus protected, at the time of the accident or injury, were acting in the discharge of their duties within the scope of their employment and/or under the direction of the school board.

Insurance

School districts may arrange for or maintain appropriate insurance, or act as self-insurers for the protection outlined above.

This law shall not be construed as creating or tending to create a liability for a school district that protects and insures its teachers; nor shall the failure to procure insurance as authorized, be construed to create any liability on the part of the school district.

(Wyoming Statutes 1957. Secs. 21-157, 21-158)

TORT LIABILITY AND LIABILITY INSURANCE

March 1969

PART II. STATUTORY PROVISIONS FOR PURCHASE OF LIABILITY INSURANCE THAT MAY HAVE APPLICATION TO SCHOOL DISTRICTS

ARKANSAS

Arkansas has no specific statute authorizing school districts to carry liability insurance. A provision in the insurance law, however, states that whenever liability insurance is carried by certain nonprofit and governmental agencies, including school districts and municipalities, that are not subject to suits for tort, any one who suffers injuries to person or property due to negligent conduct of such unit, or its employees or agents acting in the scope of their employment, shall have a direct cause of action against the insurer to the extent of the policy coverage. Plaintiff may sue the insurer directly, regardless of the fact that the actual unit may not be sued under the laws of the state.

The provision is explicit that carrying liability insurance is not required, and that the insurer may be sued directly regardless of the limitations to the contrary in the policy. Any restrictions in the policy that a judgment must first be recovered against the unit or the employee shall be void. (Arkansas Statutes 1947 Annotated. (1957 Replacement Volume.) Secs. 66-3240--66-3242)

IDAHO

There is no specific statutory provision that authorizes Idaho school districts to purchase liability coverage. However, in the insurance law, it is provided that on all liability policies sold to the state, any agency, department or other political subdivision, including municipalities or any specifically chartered subdivisions, and all political subdivisions organized under general laws of the state and exercising sovereign powers, or purchased directly, which shall protect these units or its officers or employees against liability for tort claims, shall carry an endorsement that the company will not deny liability because of sovereign immunity.

The immunity of the units enumerated above is waived to the extent of the liability insurance carried. The law states that the carrying of insurance is not required.

(Idaho Code. Secs. 41-3304--41-3306)

NORTH DAKOTA

Any political subdivision of the state may insure against claims of loss, damage, or injury made against such subdivision or any department, agency, or function, or any officer, agent, or employee of the subdivision. If insurance is purchased, immunity is waived only to the type and amount of coverage.

(North Dakota Century Code. Sec. 40-43-07)

TENNESSEE

All municipal corporations or other political subdivisions of the state are authorized to contract, at government expense, for policies of liability insurance to protect employees in the course of their employment.

(Tennessee Code Annotated. Sec. 6-641)

VERMONT

Vermont has no specific statute authorizing the purchase of liability insurance for teachers and other school employees. A law permits municipal corporations to contract for all forms of insurance for employees, and for liability insurance for motor vehicles owned and operated by it and the driver thereof.

When a municipality purchases a liability insurance policy, governmental immunity is waived to the extent of the policy.

(Vermont Statutes Annotated. Title 29, secs. 1401-1406)